Focus on Commerce

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May 2009 A Publication of the American Legislative Exchange Council

The Regulatory Flexibility Act:
Helping Small Businesses

Cybercrime:
Spam, Phishing, and Spyware

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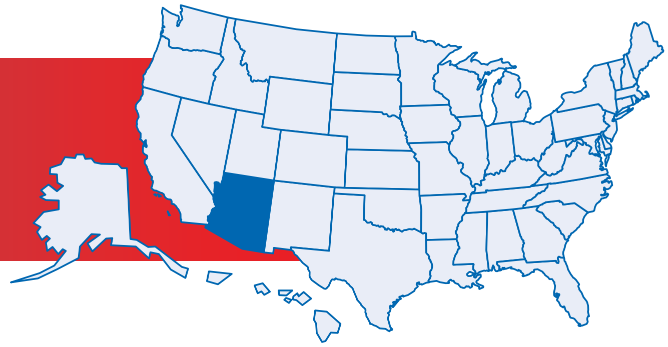
State Spotlight: Model Legislators



Arizona Opposes "Card Check"

By Stephen Elzinga

What impact can state legislators have on federal legislation? If the recent success of "card check" opponents is any indication, the answer is, "quite a lot." The past several months have seen a groundswell of state resolutions against the Employee Free Choice Act, or "card check" as it is commonly referred to. This legislation deprives workers of their right to a secret ballot during union recognition campaigns, and it has inspired opposition across the political spectrum.

A number of state houses have passed resolutions opposing the Employee Free Choice Act, far outweighing the few resolutions passed supporting the bill. In fact, this year twenty-five states saw the introduction of resolutions or bills to protect secret ballots in their states. In what has become a regular occurrence, ALEC members have taken the initiative to affect change at the state level.

Arizona House Majority Leader Rep. John McComish

A perfect illustration of this can be seen in Arizona, where ALEC member and House Majority Leader Rep. John McComish (R-AZ) spearheaded and passed HCM 2004. This resolution expressed the Arizona House of Representatives' strong opposition to "any attempt to take from Arizona workers the fundamental right to a secret ballot in a union organizing election." Boosted by HCM 2004 and other victories in Alabama, Michigan, Mississippi, Oklahoma, and South Carolina, the proponents of secret ballots for union elections have been gaining momentum.

The hard work of state legislators like Rep. McComish has been critical, enabling the movement to achieve a measurable impact quickly. Recently, US Senators Arlen Specter (R-PA) and Blanche Lincoln (D-AR) – both crucial swing votes on "card check" – announced their intent to oppose the Employee Free Choice Act in its current form. Although the "card check" battle is far from over this session, proponents of the secret ballot now clearly have the upper hand – thanks in large part to the hard work and persistence of state legislators.

Stephen Elzinga is a research assistant working with ALEC's Commerce, Insurance, and Economic Development Task Force.

Battle of the Bans:
Science vs. Hysteria in Children's Toys

By Matt Warner

Google the word "phthalates" and you'll get a lot of information from several sources. You can start with the Wikipedia link that describes phthalates as substances added to plastics to increase their flexibility. Then you can visit the American Chemistry Council's site to learn more about the thousands of consumer products that are improved or enhanced because of phthalates. Finally, you'll notice some blogs and environmental websites whipping up fear about the use of phthalates in the products we buy for ourselves and our children.

Taken together, this internet search begs the question, should we as citizens and state legislatures be worried about phthalates? The answer is no. Not only have phthalates survived decades of rigorous testing both in the United States and Europe, but just last year Congress passed a new federal law governing phthalate use that preempts further action from states by making proposed legislation at the state level moot. It's also worth noting that even government scientists say the new federal restrictions go too far.

Many states have responded by dismissing the issue in their legislatures and moving on to more worthwhile business. But in other states, legislators have pressed on with proposals to restrict phthalate use either because they are unaware of the new federal law or because they are determined to satisfy local constituencies who may not have all the facts about phthalates' safety.

If your state is still advancing legislation to ban phthalates, consider the following excerpt from an April 1, 2009 National Public Radio news piece.

A new federal ban on chemical compounds used in rubber duckies and other toys isn't necessary, say the government scientists who studied the problem.

The ban, which took effect in February, prohibits making or selling duckies and other children's products that contain chemicals called phthalates, which are used to make plastic soft. Congress passed the ban in 2008 after concluding that the chemicals posed a risk to children who chew on their toys.

The action came despite advice not to enact the ban from scientists at the Consumer Product Safety Commission, which regulates toys.

The commission opposed the ban because "there was not a risk of injury to children," says Dr. Marylin Wind, deputy associate executive director for health sciences at CPSC.

The law, the Consumer Product Safety Improvement Act (CPSIA), includes several new regulations on children's products, including enhanced lead and phthalate restrictions in toys and the requirement of third-party testing for retailers.

The CPSIA specifically mandates preemption of any state or local law that is inconsistent with the temporary prohibition of either high or low molecular weight phthalates.

This statute is to be considered a federal consumer product safety standard which is explicitly pre-emptive of state law. Federal preemption of inconsistent consumer protection law has been established since the passage of the first federal statute on consumer protection. The aim is to promote a scientific basis for the evaluation of consumer products and to avoid state-by-state regulations that could inadvertently harm consumers and industry alike.

The national standard for phthalates brought some relief to toymakers nationwide as they would no longer be subjected to different regulations and testing procedures in the different markets. After the swift passage of strict toy safety bills and phthalate bans in California, Washington, and Vermont, toy manufacturers were faced with the dilemma of how to follow these patchwork standards.

But it appears that even after passage of a national standard, some special interest groups are still not satisfied and are calling for further action that duplicates or violates the existing federal law. Some activists even claim the federal law wasn't stringent enough because it called for more testing of certain phthalates. The irony is that none of the alternatives used to replace these substances have been tested by a U.S. government agency.

Congress considered the scientific evidence on phthalates and noted the important distinction between the low molecular weight (LMW) phthalates and high molecular weight (HMW) phthalates. For the three HMW phthalates – diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DnOP) – Congress legislated a much narrower, temporary prohibition on items that can be placed in the mouth.

While there is some concern about exposure to LMW phthalates, science concludes that HMW phthalates are safe for use at current levels in children's products. Government studies have stated there is minimal concern about exposure to HMW phthalates like DINP, the plasticizer most commonly used in children's toys, which has been safely used for decades. In fact, DINP has been thoroughly evaluated and determined to be safe by multiple government agencies, including the Consumer Product Safety Commission (CPSC) and the National Toxicology Program's (NTP's) Center for Evaluation of Risks to Human Reproduction (CERHR).

The temporary prohibition on HMW phthalates will remain in effect until a scientific review by a Chronic Hazard Advisory Panel (CHAP) is completed on these substances and their alternatives. At the conclusion of the CHAP, the panel will make recommendations as to whether or not any phthalate or any phthalate alternative should be declared a banned hazardous substance. The CHAP should be conducted expeditiously so the CPSC can promulgate a ruling to clarify the standard once and for all. This additional CHAP review will give even further affirmation of the safety of these products, and the ruling will have full pre-emption over inconsistent state regulations.

The end effect of the CPSIA will establish a single, federal standard for the regulation of all plasticizers. With a federal law already on the books, it would be redundant and a waste of taxpayer time and resources for state governments to move forward with similar phthalate bills or, alternatively, to pursue legislation that would conflict with the federal standard on phthalates and have it struck down in court upon enactment. In the middle of a national recession, when states are already strapped for cash, and considering the enormous cost of chemical regulation, efforts to duplicate the federal government's actions on toy safety will undoubtedly fall short of any substantive or effective result.

In response, Rhode Island recently postponed its bills on the subject and Hawaii substituted a bill in favor of a study. Washington State's Department of Ecology has formally withdrawn an agency rulemaking on a proposed rule affecting phthalates in children's products in light of the new federal standard.

States that are moving forward, like Oregon and New Jersey, should make sure they have reviewed the new federal law as well as the abundant scientific evidence showing the safety record of phthalates. It shouldn't take long to see there is little point in proceeding with plans to further restrict the phthalates marketplace.

Matt Warner is the Director of ALEC's Natural Resources Task Force.

Florida Loses Insurance Business

By Eli Lehrer

Florida has America's most troubled and most politically regulated homeowners' insurance market. In early 2009, State Farm—the largest homeowners' insurer in the Florida market and the second largest in the United States—announced it would stop providing new coverage in the self-described "sunshine state." For Florida, this was a major blow. The company's exit doesn't merely leave thousands of Florida homeowners scrambling for a reliable insurer; it also adds to the already enormous financial risk that Florida would face if costly storm damage were to occur.

In order to lower prices for its residents, the state of Florida has offered scads of subsidized homeowners' insurance. One state agency—the Florida Citizens Property Insurance Corporation (CPIC)—writes property insurance policies at below-market rates. Another state-run entity, the Hurricane Catastrophe Fund, offers all insurers mandatory, subsidized "reinsurance" (insurance for insurance companies) if they experience large losses. However, this system hasn't delivered. CPIC charges very high rates and, because the Catastrophe Fund has no hard assets to speak of, companies have no confidence it can actually keep its promises. Taxpayers, therefore, face potential liabilities of $30 billion if a major storm hits.

Unlike State Farm, which had about $60 billion in hard assets and purchased plenty of reinsurance from private companies, Citizens and a number of smaller Florida-only companies that will take some of State Farm's business rely almost entirely on the Hurricane Catastrophe Fund. But this fund doesn't have sufficient real assets to back up its promises. Rather than making investments, as private reinsurance companies do, the Catastrophe Fund plans to finance its payouts by selling enormous amounts of bonds—as much as $30 billion worth—after a major storm hits. In theory, the Catastrophe Fund would then repay these bonds via surcharges on insurance premiums for homes and vehicles. However, because no state has ever sold more than $11 billion worth of bonds all at one time, the fund simply cannot keep its promises—especially in today's troubled credit market.

As a result, a costly storm or series of storms almost certainly would cause the collapse of CPIC, the Catastrophe Fund, and many, small, in-state, nominally "private" companies that rely heavily on Catastrophe Fund coverage. Yet because the State of Florida guarantees the solvency of all of these "private" companies, Floridians would end up footing at least part of the bill.

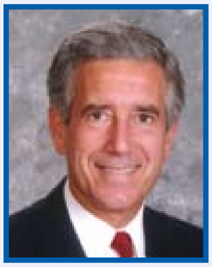
Any state looking to change its property insurance system should not look to Florida as an example. People who live near the coast should pay higher rates than they do now. States should instead follow the examples of Wyoming, Arizona, Vermont, and Illinois that have let the free market set insurance rates. States might also consider efforts similar to those in South Carolina, which offer tax credits to people of modest means who live in storm prone areas and have houses that need reinforcement.

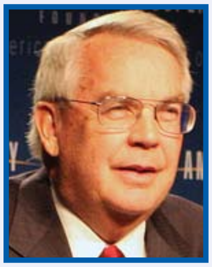
America's coastal insurance problems have solutions. But Florida's model simply isn't worth the risks it creates.

Eli Lehrer is a Senior Fellow at the Competitive Enterprise Institute and an advisor to ALEC's Commerce, Insurance, and Economic Development Task Force.

Is There A Gorilla In Your Backyard?

By Illinois Senator Chris Lauzen, CPA and Barry W. Poulson, Ph.D.





As governments meet demands for full disclosure of their costs, they are discovering a hidden cost in their budgets, the large and growing cost of funding pension and other post employment benefits (OPEB) for retirees. Indeed there is a gorilla in the backyard of virtually every state and local government in the form of unfunded liabilities in pension and OPEB plans.

States report unfunded liabilities in their pension plans in financial statements following guidelines established by the Government Accounting Standards Board (GASB). These unfunded liabilities are now estimated at more than one trillion dollars and growing. Politicians have promised public employees retirement benefits that they can't possibly pay for. Taxpayers are now demanding reforms in pension benefits to reduce and eliminate these unfunded liabilities.

The best measure of the success of states in pre-funding their pension obligations is the funding ratio. The funding ratio is equal to the actuarial value of assets divided by actuarial accrued liabilities. Unfunded liabilities are that portion of accrued liabilities not offset by assets in the plan.

In the course of the 20th century, states made significant progress in pre-funding their pension obligations. By the 1970's the funding ratio reached 50 percent; in the 1990's the ratio was 80 percent; and in 2000 the ratio was slightly above 100 percent. With a booming economy and the run up in the stock market in the 1990's, most states were able to eliminate unfunded liabilities in their pension plans.

This success in eliminating unfunded liabilities in state pension plans was short lived. Recent recessions and the fall in the stock market have resulted in significant losses in assets held by these pension funds. The funding ratio of state pension plans has fallen sharply, and unfunded liabilities in these plans have accumulated at an unprecedented rate.

The crisis in state pension plans also reflects some grievous errors in managing these plans. During the boom years of the 1990's many states increased the share of assets in stocks versus fixed income assets, exacerbating the losses when the stock market collapsed. Many states extended extremely generous benefits to public employees, the costs of which would be borne over many years. Some states reduced and suspended employer contributions to their pension funds.

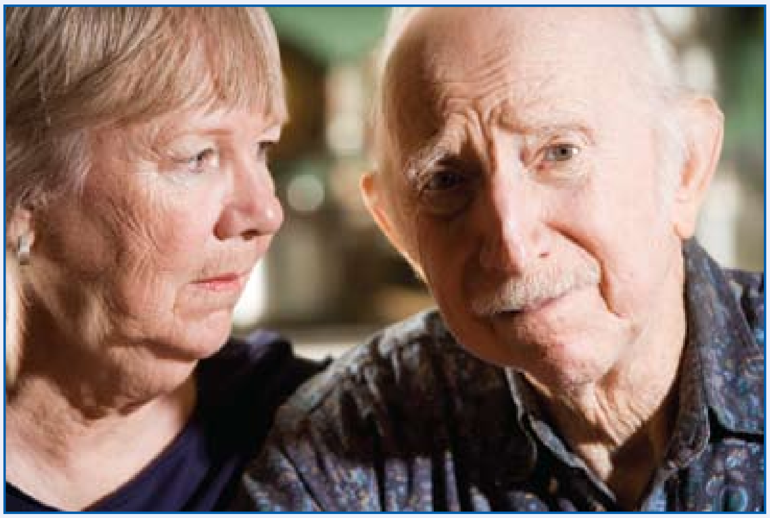
Demographic and lifestyle changes also increased liabilities in state pension funds. More public employees chose early retirement, often in response to inducements offered by states to retire early. Employees also lived longer in retirement.

While most states are struggling to fulfill their pension obligations, they are finding it even more difficult to meet Other Post Employment Benefit (OPEB) obligations. OPEB includes health insurance, life insurance, and other non pension benefits for retirees. OPEB benefit obligations have been increasing for the same reason that pension benefits have increased. States have offered more generous OPEB benefits over the years. Employees eligible for these benefits have retired earlier and are living longer. However, the cost of the largest of these OEB benefits, health care benefits for retirees, has increased at an alarming rate. This reflects improvements in the health care provided to retirees and higher prices for these health care services. OPEB liabilities are likely to increase rapidly in future years with increases in the cost of health care provided retirees.

States are only beginning to measure the size of these OPEB obligations, and the magnitude of OPEB liabilities has come as a shock. For most states, OPEB liabilities exceed unfunded liabilities in their pension plans. When all states have reported their OPEB liabilities, it is likely that the total unfunded pension and OPEB liabilities will exceed two trillion dollars.

A number of states have begun to implement strategies designed to reduce and eliminate OPEB liabilities. Some states have established task forces or commissions to recommend solutions to the problem. Several states have modified benefits available in their OPEB plans, and some states have increased actuarial required contributions to their OPEB plans. Unlike pension obligations, most states continue to fund their OPEB obligations on a pay-as-you-go basis; however, a number of states have begun to pre-fund OPEB obligations by establishing trust funds to accumulate assets.

Jonathan Williams, ALEC Task Force Director for Tax and Fiscal Policy, has established the Unfunded Liabilities and Public Pensions Working Group. This group is co-chaired by the authors of this paper. We met during December's States and Nation Policy Summit and decided on a two pronged approach to address the problem of unfunded liabilities in state and local pension and OPEB plans.



The first approach is to design model legislation increasing transparency regarding unfunded liabilities in state and local pension and OPEB plans. It has been almost a decade since governments implemented Governmental Accounting Standards Board (GASB) current standards for reporting the pension costs and obligations of state and local governments.

More recently, GASB has issued standards for reporting Other Post Employment Benefits (OPEB) in state and local government financial statements. GASB's OPEB standards require governments to report funding progress using the most recent actuarial valuation.

These actuarial calculations project future cash outlays for OPEB benefits based on economic and demographic assumptions then discount them to their actuarial present value. The actuarial present value generally is spread over a period that approximates the anticipated years of an average worker's employment with the government. GASB is proposing that standards for reporting pension costs and obligations provide the same actuarial information.

Unfortunately, not all state and local jurisdictions are currently meeting these standards. In the case of pension plans many jurisdictions continue to use actuarial accounting techniques that do not meet these standards. For example, some pension plans use an infinite time horizon, rather than the recommended 30 year time frame. Many pension plans assume a rate of return on assets that exceeds more prudent assumptions recommended by actuaries. These are fatal flaws that overstate the funding ratio and do not provided an accurate picture of the funding status of pension plans.

Many state and local jurisdictions are only beginning to measure the unfunded liabilities in their OPEB plans, let alone begining to address the problem.

It is clear that citizens are demanding greater transparency in accounting for the costs of state and local government. Given the large and growing unfunded liabilities in pension and OPEB plans it is crucial for state and local governments to meet accounting standards for these plans established by the Government Accounting Standards Board.

The sub-committee has proposed model legislation to make citizen access to this information as open, transparent, and publicly accessible as is feasible. Increasing the ease of public access to this information significantly contributes to governmental accountability, public participation, and the understanding of the cost of government services. The model legislation directs the state budget office to create and maintain a searchable database of this information for all taxing districts in the state.

The sub-committee's second approach is to adopt policy guidelines for state and local governments to solve the problem of unfunded liabilities in pension and OPEB

plans. There is no reason why public pension and OPEB plans should not be brought into line with similar private plans.

Today, the trend in both the private and public sector is to replace defined benefit plans with defined contribution plans. Across the country state and local governments are adopting defined contribution plans to provide workers with greater control over their retirement future and to ease the burden on taxpayers. The result has been a convergence of public sector pension systems with those offered in the private sector.

The model is Alaska, which replaced a defined benefit pension plan for public employees with a defined contribution plan. The administration of the old defined benefit plan was eliminated and a new administration of the defined contribution plan appointed by the state.

Well-structured reforms, such as those enacted in Alaska, can provide generous benefits to workers while actually reducing costs for both workers and taxpayers. With a defined contribution plan for newly-hired workers, over time, as the newly hired workers become an increasingly larger component of the workforce, the problems in the current plans will disappear. Most importantly, the unfunded liabilities could be gradually reduced and eliminated.

Employers in the newly defined contribution system would make smaller contributions than they currently contribute to the defined benefit plan. Employers would then pay these saved amounts towards covering the unfunded liabilities of the current system for current workers. This would reduce the burden on taxpayers, who must assume the burden of unfunded liabilities in the current system. After all funding gaps are eliminated, these savings would then remain with the employer, resulting in a continuing net reduction in the burden on taxpayers.

In this proposed reform all new workers would be automatically enrolled in the defined contribution plan from the start of their employment. Each worker would make contributions to a personal account, choosing from an approved list of investment options. The options would include a list of stock funds, bond funds, and a range of fixed investments. The list might also include approved money managers who would pick the investments for the workers.

The defined contribution plan would carry no vesting requirements. Workers would immediately own the assets in their personal accounts. As long as the worker continued to work for a public employer covered by the system, he or she would not be permitted to withdraw funds from the account before retirement. Workers who leave public employment could take their personal accounts with them as an IRA or 401(K) asset for their future retirement. Funds in those accounts would then accumulate tax-free until withdrawn at retirement.

When the worker in the defined contribution system retires, their retirement benefits would equal what the funds accumulated in their personal accounts could pay. When the worker chooses to retire and receive these benefits would be entirely up to the worker, subject to any federal restrictions on withdrawal of these funds.

Current workers would be given the freedom to choose to switch to a defined contribution plan in place of their current defined benefit plan. Many of these current workers may find the benefits of a defined contribution program desirable. Younger workers or workers who plan to leave public sector employment within a 10-year period would find the option particularly appealing.

For those employees who switch to the defined contribution plan, all past employee contributions to the defined benefit plan would be transferred to the defined contribution plan. Vested current employees who choose to switch would receive an equivalent to the retirement benefits promised to them under the current plan. An amount equal to the present value of their accumulated retirement benefits would be transferred to their defined contribution accounts.

This proposed reform would make no change in the benefits received by current retirees. Further, there would be no change in the benefits of current employees who choose to remain in the defined benefit plan.

If public pension and OPEB plans were private plans, many of them would be declared insolvent. Insolvency is the basis for restructuring pension plans in the private sector, including the replacement of defined benefit plans with defined contribution plans. But because these are public pension and OPEB plans, they are ultimately the responsibility of taxpayers, and it is taxpayers who must make up the difference between assets and liabilities. Taxpayers are already on the hook for trillions of dollars in unfunded liabilities, and they will have to pay for any future unfunded liabilities incurred by these plans.

Citizens may well ask how we got into this unfunded liability mess. The explanation is that the people making these pension decisions do not have to bear the cost. The public employees who administer these plans and the unions who represent other public sector employees negotiated benefits for those employees for which they are unable to pay. Elected officials charged with oversight of the state pension system failed to fulfill their charge. As a result, taxpayers will be paying taxes to finance these benefits long after these bureaucrats and politicians have left. Without reform, spending on almost every other state-funded program will have to be cut drastically.

The reality is that citizens cannot do much about the funding crisis that already exists in these plans. But they can stop the bleeding by enacting fundamental reforms in the state pension and OPEB plans.

Chris Lauzen is a State Senator representing Illinois' 25th District. Senator Lauzen is a voting member of ALEC's Tax and Fiscal Policy Task Force, where he serves as Chairman of the Unfunded Liabilities and Public Pensions Working Group

Dr. Barry Poulson is a Professor of Economics at the University of Colorado and serves as an Advisor to ALEC's Tax and Fiscal Policy Task Force.

1 For a survey of state pension and post employment benefit plans for public employees see, Standard and Poor's, "Market Volatility Could Shape Up State Pension Funding Stability," Ratings Direct, February 20, 2008; and "U.S. States are Quantifying OPEB Liabilities and Developing Funding Strategies As the GASB Deadline Nears," Ratings Direct, November 12, 2007.

2 Barry W. Poulson, "Pension Liberation for Colorado: A Proposal to Reform PERA," Americans for Prosperity Foundation, (September 2005); and "What Now for PERA: Déjà vu All Over Again?" Independence Institute, (March, 2009).

3 The states that have been most successful in replacing their defined benefit plans with defined contribution plans are Alaska, Michigan, and Oregon. Michigan's defined contribution plan for state employees has significantly reduced costs and made significant progress in reducing unfunded liabilities. A Michigan report notes that as the MSERS (Michigan State Employees Retirement System) gets closer to retiring its final defined benefit employees (in about 50 years), it will rely more and more on the assets in the system rather than on contributions of the active members, since the number of active members will continue to decline. Joe Carrasco, Jr., "Membership and Contribution Rate Changes for Michigan's Two Largest Retirement Systems---A 10-Year History," State Notes Topics of Legislative Interest, March/April 2005.

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Cybercrime:
Spam, Phishing, and Spyware

By Seth Cooper

The growth of e-commerce has proven a tempting target to hackers and online fraudsters. Start with annoying e-mail spam, a continuing source of frustration and complaints. Unsolicited commercial e-mails with fraudulent headings and bizarre contents bog down networks and slow down user connection speeds. Worse, e-mail spam is a tool of identity fraudsters and acts as a dispenser of computer viruses.

A related threat to computer users comes from "phishing," a common tactic for identity fraudsters. Scammers send e-mails falsely identified as coming from trusted commercial websites and services, inducing consumers to provide credit card numbers and financial information. A newer variant dubbed "spear-phishing" targets specific companies or individuals for scamming, using customized techniques that are more difficult to identify as fraudulent.

Then there's "pharming," a tactic whereby an individual or entity falsely represents itself as belonging to a legitimate and trusted business on the Web. "Pharming" fraudulently induces would-be customers to provide sensitive personally identifying information or property to the phony front.

Computer users also encounter problems from different kinds of "spyware." Such unwelcome software programs are surreptitiously installed on computers where they pose a variety of technological hazards. "Spyware" ranges from more innocuous "ad-ware," which generates pop-up ads, to more dangerous programs that record user keystrokes to obtain personal information such as credit card numbers and passwords.

Computer users who operate without antispyware, antivirus and firewalls can also find their computers taken over by "bots." A malicious type of software, bots can control computers and use them as tools to perpetrate further identity fraud operations. Computers controlled by bots can become hosts of phishing sites and infect other computers.

Internet access providers and software companies are continuing to develop new methods for combating these harmful cybercriminal activities. Nonetheless, fraud, theft, and destruction of property constitute criminal conduct and states have a legitimate role in using their police powers to hold wrongdoers accountable under the law. But for some states this will mean first establishing clear and responsible laws to prohibit and punish cybercrime.

ALEC has several model bills to address cybercrime. *ALEC's Computer Spyware Protection Act (2005)* provides a civil cause of action against persons who intentionally and deceptively install software that changes the settings that control another's computer. It also makes it unlawful to collect personally identifiable information through a keystroke-logging function that records keystrokes made by the owner or operator of a computer.

In addition, *ALEC's Anti-Phishing Act (2006)* makes it a felony to defraud someone by using a false website or pretending to be a legitimate Internet business and fraudulently obtaining identifying information. The model bill also provides a civil cause of action against those carrying out phishing and pharming schemes.

Also, *ALEC's Computer Protection Act (2004)* makes it unlawful to relay or transmit commercial e-mail spam that is intended to mislead or deceive recipients. The bill also prohibits accessing the computer of another without authorization to send e-mail spam.

As the future of commerce continues to emphasize the use of the internet, states that have not yet taken legislative steps to combat spyware, phishing, spam or other scams now have even more reason to do so. Legislators interested in promoting cybersecurity and punishing online scammers should consider introducing these important model bills in their next session.

Seth Cooper is the Director of ALEC's Telecommunications and Information Technology Task Force.

ALEC Takes Higher Education Questions and Answers to the States

By David J. Myslinski

A brand-new publication by ALEC's Education Task Force was unveiled to a group of state legislators and members of the business community in Nashville, Tennessee, on St. Patrick's Day. In the packed room, green dominated not only attendees' fashion choices, but the discussions as well, as participants learned more about the dollars being spent on and charged for American higher education.

ALEC's *10 Questions State Legislators Should Ask About Higher Education* is a resource for state lawmakers interested in learning more about the current issues affecting states' colleges and universities. Not only does this unique publication list the key questions to ask higher-education representatives, government officials, and fellow legislators, but it also provides a host of resources to find the answers and solutions.

"This new guide has helped me to analyze the cost-effectiveness and affordability of Tennessee's higher-education system and institutions," said Rep. Jimmy Eldridge. "We must keep higher education a priority to ensure our state maintains and encourages a well-educated workforce and strong leadership for the future."

Authored by Dr. Vicki E. Murray of the Pacific Research Institute – who also served as keynote speaker at the Tennessee issue briefing – the 10 questions pamphlet is ALEC's first publication on higher education. And its release could not be more timely. In fact, the week of ALEC's Nashville event, a number of bills on streamlining that state's higher-education system were floating through the capitol. More and more, legislators across the country, including in Tennessee, are grappling with the public's growing concern over higher education – primarily the cost issue. And, as a result, they are taking action.

"Legislators are looking for solutions to the collegiate cost crisis, and for the sake of their constituents understandably so," Dr. Murray said. "However, we must ensure that proposed ideas and actions will really solve the problem, and not just continue the status quo or make matters worse.

"There are ways to ensure students' success in college and also save state taxpayers money when funding higher education," Dr. Murray added. "These solutions must have a voice in state capitols."

With ALEC's dedicated legislative members, they do. More than 30 Tennessee lawmakers were in attendance for the publication's release, discussing with Dr. Murray the best avenues for ensuring success.

In coordination with the 10 questions guide, ALEC also launched an online component with Web links to sites with interactive maps, blogs, and extensive reports on higher education. The site will be maintained regularly to ensure the most up-to-date information is available for ALEC's public- and private-sector members.

Tennessee Rep. Steve McManus (right) comments on some key points made in ALEC's new guide.

"I have been a member of ALEC for the seven years I have served in the Tennessee legislature and highly recommend it," Rep. Eldridge added. "It is fair, non-partisan, and offers many benefits – including this new publication."

ALEC would like to thank State Chairman Rep. Curry Todd and Rep. Steve McDaniel, both of whom serve on ALEC's Board of Directors, for their guidance in planning this event and for their continued leadership in Tennessee.

Next Stop: Indiana

Following the success of ALEC's Tennessee issue briefing, Indiana legislators participated in a discussion on quality and productivity issues in higher education, April 16, in Indianapolis. Leading the conversation was Anne Neal, President of the American Council of Trustees and Alumni and Private Sector Chairman of ALEC's Higher Education Subcommittee. In attendance were ALEC members from the Friedman Foundation for Educational Choice and the Lumina Foundation for Education, as well as representatives from the Indiana Chamber of Commerce and the Indiana Department of Education.

ALEC would like to thank State Chairmen Sen. Jim Buck and Rep. Dave Wolkins for their leadership in coordinating this event and for their continued promotion of Jeffersonian principles in Indiana.

To receive 10 Questions State Legislators Should Ask About Higher Education, visit www.alec.org.

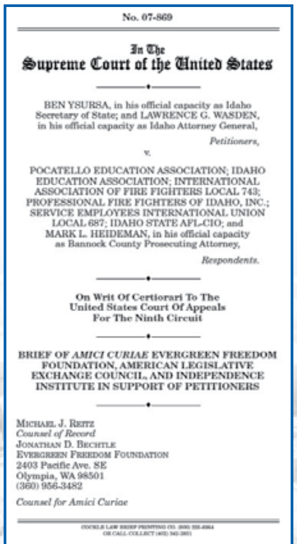
David J. Myslinski is the Legislative Assistant for ALEC's Education & Health and Human Services Task Forces.

U.S. Supreme Court Upholds State Limitations on Union Political Fundraising

By Michael Reitz and Scott Dilley

The U.S. Supreme Court dealt unions a serious blow in the case of *Ysursa v. Pocatello Education Association* in February when it upheld an Idaho state law. The issue in the case was whether the First Amendment requires local governments to collect political funds for public employee unions.

In 2003 the Idaho Legislature passed the Voluntary Contributions Act which prohibits state and local governments from using the public payroll system for collecting political contributions. That law formed the basis for similar ALEC model legislation by the same name.



No. 07-869

In The
Supreme Court of the United States

BEN YSURSA, in his official capacity as Idaho Secretary of State; and LAWRENCE G. WASDEN, in his official capacity as Idaho Attorney General,

Petitioners,

v.

POCATELLO EDUCATION ASSOCIATION; IDAHO EDUCATION ASSOCIATION; INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 743; PROFESSIONAL FIRE FIGHTERS OF IDAHO, INC.; SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 687; IDAHO STATE AFL-CIO; and MARK L. HEIDEMAN, in his official capacity as Bannock County Prosecuting Attorney,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICI CURIAE* EVERGREEN FREEDOM FOUNDATION, AMERICAN LEGISLATIVE EXCHANGE COUNCIL, AND INDEPENDENCE INSTITUTE IN SUPPORT OF PETITIONERS

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Several unions sued Idaho Secretary of State Ben Ysursa, challenging the law as a violation of their free speech rights. The Ninth Circuit Court of Appeals said that the state could ban this practice for its own employees, but the state could not meddle in the affairs of local government bodies, such as school districts or city governments.

The Evergreen Freedom Foundation (EFF), ALEC, and the Independence Institute filed an amicus curiae (friend of the court) brief with the U.S. Supreme Court. In a 6-3 ruling, Chief Justice John Roberts upheld the Idaho law as constitutional. "The First Amendment prohibits government from 'abridging the freedom of speech;' it does not confer an affirmative right to use government payroll mechanisms for the purpose of obtaining funds for expression," Roberts wrote. "Idaho's law does not restrict political speech, but rather declines to promote that speech by allowing public employee check-offs for political activities. Such a decision is reasonable in light of the State's interest in avoiding the appearance that carrying out the public's business is tainted by partisan political activity." In other words, a legislature can ban the use of public resources in the interest of stepping out of political fundraising.

The unions claimed that the Idaho Legislature violated their free speech by eliminating political withholdings. The Court disagreed: "While in some contexts the government must accommodate expression, it is not required to assist others in funding the expression of particular ideas, including political ones. '[A] legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny.'"

The Ninth Circuit had ruled that the state legislature could not ban political withholdings at the local government level. The Supreme Court dismissed this argument completely. "Given the relationship between the State and its political subdivisions, however, it is immaterial how the State allocates funding or management responsibilities between the different levels of government," Roberts concluded.

Ysursa also resolved a more significant issue. Traditionally, states have had a wide variety of labor laws such as bans on public employee strikes, bans on using public resources for political activity, and protections for union members. The Ninth Circuit ruled that Idaho could not regulate local labor relations because the VCA affected the unions' First Amendment rights. Had the Supreme Court upheld this argument, it would have undermined many other reasonable state labor laws, Balkanizing labor relations in every state and making uniform regulations almost impossible.

The Supreme Court's *Ysursa* decision is a victory for orderly state labor relations and it is a victory for taxpayers, who should not be forced to subsidize private political fundraising.

Michael Reitz is EFF's General Counsel, and Scott Dilley is EFF's Labor Policy Analyst. The Evergreen Freedom Foundation is located in Olympia, WA, and the Independence Institute is in Golden, CO.

The Regulatory Flexibility Act:
Helping Small Businesses

By Stephen Elzinga

ALEC's model bill, the *Regulatory Flexibility Act*, was first drafted by ALEC in conjunction with the United States Small Business Administration's Office of Advocacy. Based on the federal *Regulatory Flexibility Act* originally passed in 1980, it seeks to lessen the burden of regulatory polices on small businesses.

Since being adopted as ALEC model legislation in 2003, the *Regulatory Flexibility Act* has seen stunning success. It has been adopted in full or in part in forty-four states, leaving only six states that have yet to pass some form of this legislation. States that have adopted this bill have seen significant improvements in government-business relations and it has been successful in promoting a business-friendly environment.

The goal of the *Regulatory Flexibility Act* is simple: lessen the detrimental impact of regulation on small businesses. It recognizes that regulatory burdens are often more difficult for small businesses to bear and achieves its goal by requiring all proposed regulations that would impact small businesses to undergo an extended review process. During this process, small businesses have the opportunity to comment on pending regulations, and the regulatory agency is required to submit estimates of the cost of the proposed regulation on small businesses as well as list alternative methods of compliance that are available to all businesses. The act also requires periodic review of all regulations.

Since its passage this legislation has resulted in a variety of improvements. In Wisconsin, the Health and Family Services Department sought to implement a new regulation on family childcare centers that would have required the construction of fences around all areas where children play. While the intent of this regulation was noble, the result was expensive. At the request of several affected facilities, the regulation was referred to the Small Business Regulatory Review Board, and after a second agency review, the regulation was adopted with several alternative solutions, such as the planting of shrubs in place of fences. Thus the intent of the regulation—keeping children safe—was realized while making compliance more affordable for affected businesses—a win-win outcome.

In Massachusetts, the Department of Public Health's truck refrigeration requirements were relaxed to allow small business owners to utilize small refrigeration containers within their trucks instead of purchasing full-blown refrigeration trucks. These are just two of many such examples of the success of the Regulatory Flexibility Act.

The only remaining states without this law are Alabama, Idaho, Montana, Nebraska, North Carolina, and Wyoming.

To view ALEC's *Regulatory Flexibility Act*, visit the Commerce, Insurance, and Economic Development Task Force page at www.alec.org.

Stephen Elzinga is a research assistant working with ALEC's Commerce, Insurance, and Economic Development Task Force.

Member News

ALEC and Together Rx Access Host Texas Issue Briefing

Together Rx Access Executive Director Roba Whiteley discusses her privately-funded, free prescription savings program for those without drug coverage.

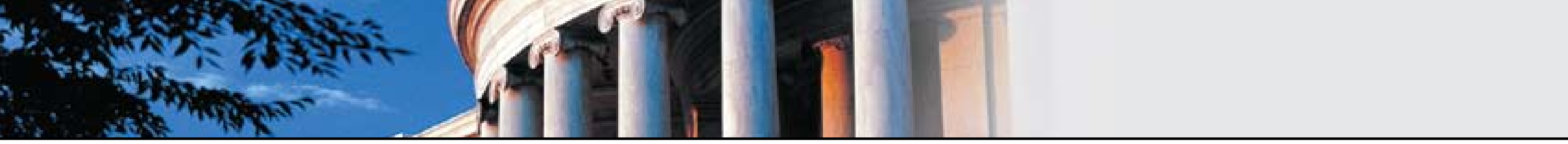
Texas House Public Health Committee Chair Rep. Lois Kohlkorst (l), discusses health policy. Texas House Speaker Joe Straus and ALEC State Chair Sen. Kel Seliger (r) look on.

On March 18, Together Rx Access Executive Director Roba Whiteley joined forces with ALEC's Texas delegation to sponsor the Issue Briefing "Helping Texas' Uninsured Gain Access to Prescription Medicines." Together Rx Access is a privately-funded, free prescription savings program for those without drug coverage. Under the program, otherwise-eligible families earning up to $105,000 per year can save 25 to 40 percent on brand-name medicines, and can save thousands on generic products. The ALEC/Together Rx Access Texas Issue Briefing was attended, among others, by House Speaker Joe Straus, House Public Health Committee Chair Lois Kohlkorst, and ALEC Texas Chairs Representative Jim Jackson and Senator Kel Seliger. For more information on Together Rx Access, visit http://www.togetherrxaccess.com/Tx/jsp/home.jsp.

ALEC Membership Event in NC

ALEC held a special membership event in Raleigh, NC, on March 24. We would like to thank State Chairs Rep. Fred Steen and Gary Salamido of GlaxoSmithKline for their hospitality. With the support of Rep. Paul Stam and Rep. Jerry Dockham, Rep. Steen invited ALEC's Jonathan Williams to present the newly released 2nd Edition of Rich States, Poor States publication to NC members and the Joint Democrat and Republican House Business Caucus. A complete list of state membership events is available online at www.alec.org. For more information please contact Rick Gowdy, Deputy Director of Membership and Development at rgowdy@alec.org or at 202-742-8512.

From left, NC State Chair Rep. Fred Steen, Rep. Bonner Stiller, ALEC Board Member David Powers from Reynolds American, and Jonathan Williams.



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Upcoming ALEC Meetings

For more information on ALEC meetings and registration dates visit www.alec.org.